

<p>CARNEGIE FORUM 305 WEST PINE STREET LODI, CALIFORNIA</p>	<p>AGENDA LODI PLANNING COMMISSION</p>	<p>REGULAR SESSION WEDNESDAY, FEBRUARY 11, 2015 @ 7:00 PM</p>
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For information regarding this agenda please contact:

Kari Chadwick @ (209) 333-6711
Community Development Secretary

***NOTE:** All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the Community Development Department, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the Community Development Department as soon as possible and at least 24 hours prior to the meeting date.*

1. ROLL CALL
2. MINUTES – “December 10, 2014”
3. PUBLIC HEARINGS
 - a. Request for Planning Commission approval of a Use Permit to allow a Type-41 On-Sale Beer and Wine for Wingstop at 2640 Reynolds Ranch parkway #100. (Applicant: Mann and Company Inc - Wingstop Restaurant; File 2015-01 U; CEQA Determination: Exempt per Section 15321)
- NOTE: The above items are quasi-judicial hearings and require disclosure of ex parte communications as set forth in Resolution No. 2006-31**
4. PLANNING MATTERS/FOLLOW-UP ITEMS
 - a. 2126, 2128 and 2130 Tienda Drive Sunwest Cottages Housing Project Landscape Plan and CC&R’s (Applicant: Mr. Fred Baker; File 2014-39 S SP)
5. ANNOUNCEMENTS AND CORRESPONDENCE
6. ACTIONS OF THE CITY COUNCIL
7. ACTIONS OF THE SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE
8. ART IN PUBLIC PLACES
9. COMMENTS BY THE PUBLIC (NON-AGENDA ITEMS)
10. COMMENTS BY THE PLANNING COMMISSIONERS & STAFF (NON-AGENDA ITEMS)
11. ADJOURNMENT

Pursuant to Section 54954.2(a) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.

****NOTICE:** Pursuant to Government Code §54954.3(a), public comments may be directed to the legislative body concerning any item contained on the agenda for this meeting before (in the case of a Closed Session item) or during consideration of the item.

Right to Appeal: (see page 2)

If you disagree with the decision of the commission, you have a right of appeal. Only persons who participated in the review process by submitting written or oral testimony, or by attending the public hearing, may appeal.

Pursuant to Lodi Municipal Code Section 17.72.110, actions of the Planning Commission may be appealed to the City Council by filing, within ten (10) business days, a written appeal with the City Clerk and payment of \$300.00 appeal fee. The appeal shall be processed in accordance with Chapter 17.88, Appeals, of the Lodi Municipal Code. Contact: City Clerk, City Hall 2nd Floor, 221 West Pine Street, Lodi, California 95240 – Phone: (209) 333-6702.

**LODI PLANNING COMMISSION
REGULAR COMMISSION MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, DECEMBER 10, 2014**

1. CALL TO ORDER / ROLL CALL

The Regular Planning Commission meeting of December 10, 2014 was called to order by Chair Kiser at 7:00 p.m.

Present: Planning Commissioners – Cummins, Hennecke, Kirsten, Olson, Slater and Chair Kiser

Absent: Planning Commissioners – Heinitz

Also Present: Senior Planner Craig Hoffman, City Attorney Janice Magdich, and Administrative Secretary Kari Chadwick

2. MINUTES

“October 22, 2014”

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Slater, Hennecke second, approved the minutes of October 22, 2014 as written. (Commissioner Olson abstained because she was not in attendance of the subject meeting)

3. PUBLIC HEARINGS

- a) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Kiser called for the public hearing to consider the request of the Planning Commission for approval of a Use Permit Amendment to increase the number of legal cardroom tables from 13 to 15 at 1800 S. Cherokee Lane. (Applicant: Chris Ray, on behalf of Wine Country Cardroom & Restaurant.; File Number: 2014-33 U; CEQA Determination: Exempt Per Section 15321)

Senior Planner Craig Hoffman gave a brief PowerPoint presentation based on the staff report. Staff is recommending approval of the project as conditioned. City Attorney added a brief report regarding the steps that were taken to change the ordinance at the City Council and State levels.

Commissioner Slater asked for clarification as to how the number of tables each City is allowed is determined. Ms. Magdich stated that the applicant may have a better understanding of how that process works.

Commissioner Hennecke asked if the additional parking has alleviated the overflow of cars parking on Cherokee Lane. Mr. Hoffman stated that there have been no enforcement issues in regards to parking on the street.

Commissioner Olson asked if any other businesses have shown an interest in putting in tables. Mr. Hoffman stated that he has not had anyone approach him and Ms. Magdich stated the same.

Hearing Opened to the Public

- Chris Ray, applicant, came forward to answer questions. Mr. Ray stated that there is a moratorium in the State of California regarding card room licenses through 2025. Another business cannot apply for a license with the State until that time. He isn't sure why the State of California did it that way. Bill AB820 allows existing card rooms to add additional tables. Mr. Ray stated that when the cardroom holds fundraisers they don't make any money, so the cardroom keeps a few tables open for business and gives the

balance of the tables to the group running the fundraiser. It will be nice to be able to give the fundraising group more tables for their events.

- Commissioner Slater asked how many tables the current location can hold. Mr. Ray stated that the facility cannot hold any additional tables beyond this requested addition. Mr. Slater asked if there are any plans to relocate the facility anywhere else. Mr. Ray stated that they are happy where they are and have no plans on moving.
- Chair Kiser asked what organizations have used the facility for fundraising events. Mr. Ray stated American Legion Baseball and Lodi High Baseball are the two that come to mind as well as the PALS Organization.
- Commissioner Hennecke asked if the remodel will be taking away from the dining area. Mr. Hoffman stated that the floor plan provided is the existing floor plan from the 2012 approval and no expansion of the card room area is planned.
- Attorney Magdich stated that there is a moratorium on licenses through the State Gaming Commission, but a license can be purchased from a company that already owns one. Mr. Ray added that a Stockton license cannot be purchased and moved to Lodi.

Public Portion of Hearing Closed

- Commissioner Kirsten stated his support for the request and the establishment.

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kirsten, Kiser second, finds the project has satisfied the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15321, and adopt a resolution approving the Use Permit Amendment to increase the number of legal cardroom tables from 13 to 15 at 1800 S. Cherokee Lane subject to conditions of approval contained in the draft resolution provided. The motion carried by the following vote:

Ayes: Commissioners – Cummins, Hennecke, Kirsten, Olson, Slater and Chair Kiser
 Noes: Commissioners – None
 Absent: Commissioners - Heinitz

- b) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Kiser called for the public hearing to consider the request of the Planning Commission for approval of a 9 lot subdivision map and design review of Sunwest Cottages housing project at 2126, 2128 and 2130 Tienda Drive. (Applicant: Mr. Fred Baker; File 2014-39 S SP; CEQA Determination: Exempt per Section 15332)

Senior Planner Craig Hoffman gave a brief PowerPoint presentation based on the staff report. Staff is recommending approval of the project as conditioned. Mr. Hoffman stated that Conditions 44 & 45 should be deleted from the resolution because they are duplicates of numbers 42 and 43.

Chair Kiser wanted to confirm that the CC&R's will be required. Mr. Hoffman stated that they are required and added that they can be brought back to the Commission as a follow up item. Mr. Kiser stated that he would like to see that happen.

Commissioner Kirsten asked about a landscape plan. Mr. Hoffman stated that typically a landscape plan is submitted with the building permit application. There will be landscaping along Tienda Drive and it will be consistent with residential plantings. Mr. Hoffman added that a landscape plan can be brought back to the Commission along with the CC&R's. Mr. Kirsten and Kiser both stated that they would like to see that as a follow-up item.

Chair Kiser asked if there is a requirement for the trash cans to be wheeled out to the curb like to the project next door. Mr. Hoffman stated that they will be required to bring the trash cans out to the curb for pick up.

Commissioner Hennecke asked how CC&R's are going to be enforced. Mr. Hoffman stated that the CC&R's are private rules and restrictions. They are meant to offer a level of comfort for the Commission and Staff by showing how those items that are shared amongst the properties will be maintained.

Commissioner Kirsten asked about the fence running along the west side of the property. Mr. Hoffman stated that it is a six foot high masonry wall. Along the eastern edge there is a shared driveway and a six foot high wood fence that will be along the southern edge.

Commissioner Slater asked about the requirement for the fence to use pressure treated posts. Mr. Hoffman stated that a requirement for the fencing materials is not currently in the resolution. Mr. Slater stated that he would like to see a condition added to require at least pressure treated wood posts be used for the fence. Mr. Kiser stated that metal posts would last longer.

Hearing Opened to the Public

- Steven Pechin, representative for the applicant, came forward to answer questions. Mr. Pechin stated that the project has already been approved for eight units. This application is to only add one more unit.
- Chair Kiser asked about the paving being privately owned or city owned. Mr. Pechin stated that it will be privately owned and maintained. Mr. Kiser asked if there is an agreement with Mr. Giannoni for maintaining the private drive. Mr. Pechin stated that it is his understanding that there is a joint agreement already in place for the drive. Mr. Hoffman stated that there is an existing agreement between the two property owners for maintaining the joint access easement. Mr. Hennecke asked if the agreement will be a part of the CC&R's that will be brought back to the Commission. Mr. Hoffman stated that the maintenance will be a part of the CC&R's as well as it being a stand-alone document between the two owners.

Public Portion of Hearing Closed

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kirsten, Kiser second, finds the project has satisfied the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15332, and adopt a resolution approval of a 9 lot subdivision map and design review of Sunwest Cottages housing project at 2126, 2128 and 2130 Tienda Drive subject to conditions of approval contained in the draft resolution provided along with the elimination of Conditions 44 and 45 and the addition of a condition that will require steel posts to be used for the fencing. The motion carried by the following vote:

Ayes: Commissioners – Cummins, Hennecke, Kirsten, Olson, Slater and Chair Kiser
 Noes: Commissioners – None
 Absent: Commissioners - Heinitz

- c) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Kiser called for the public hearing to consider the request of the Planning Commission for approval of a Use Permit to allow self-storage facility expansion at 515 South Lower Sacramento Road. (Applicant: Westgate Shopping Center, LLC; File 2014-40 U; CEQA Determination: Exempt per Section 15332)

Senior Planner Craig Hoffman gave a brief PowerPoint presentation based on the staff report. Staff is recommending approval of the project as conditioned.

Commissioner Slater stated that he was approached by a concerned member of Temple Baptist Church. Mr. Slater stated that most of the concerns were addressed in the presentation, but expressed some concern over the gate that is facing south. Mr. Hoffman stated that the southern

view does not currently have a gate; it is an open fence area that could be turned into a gate if there is are code requirements that would make it necessary. There will also be landscaping along the southern edge.

Commissioner Cummins asked what the current zoning is of the property. Mr. Hoffman stated that the zoning is PD-35 with an underlying General Plan designation of Commercial.

Commissioner Kirsten asked for Mr. Hoffman to show him where the basin is currently. Mr. Hoffman pointed to where the basin is located on the aerial PowerPoint slide. Mr. Kirsten asked if the applicant is going to need to modify the basin to accommodate the expansion. Mr. Hoffman stated that they will not and ultimately the basin will go away and the storm runoff will go to DeBenedetti. Mr. Kirsten asked if there is a fence around the area. Mr. Hoffman stated that there is a fence around the basin.

Hearing Opened to the Public

- Chad Roberts, Representative for the applicant, came forward to answer questions.
- Commissioner Hennecke asked if there is an onsite manager that is there full time. Mr. Roberts stated that there is an onsite manager there full time.
- Steve Opp, representative of the Temple Baptist Church, came forward to express some concerns. Mr. Opp stated that the main concern is with unauthorized vehicles accessing the church property by way of crossing this property from the Raley's parking lot. The retention basin has had several issues over the years, but the most recent issues would be that the fence was hit by a car and needs repair as well as the area was burned by the fire that occurred on the property. Mr. Opp stated his appreciation for the condition from Public Works requiring the applicant to fix those issues.
- Commissioner Kirsten asked if the landscaping meets expectations. Mr. Op stated that the landscaping does meet expectations. Mr. Kirsten asked for clarification on the vehicles accessing the private drive. Mr. Opp stated that cars come from the vineyard in the back and from the Raley's parking lot. These are not customers from the shopping center.

Public Portion of Hearing Closed

- Commissioner Olson asked if the basin can accommodate the additional growth. Mr. Hoffman stated that Public Works reviewed that and it can accommodate this additional growth. As development comes in this basin will go away and the stormwater will go to DeBenedetti Basin. Ms. Magdich added that there was an underground stormwater outfall installed under the property located just south of Vine Street where the strawberry stand is on the corner.
- Commissioner Slater asked if there is anything that can be done to prevent unauthorized vehicles from cutting across the property to reach the church property. Mr. Hoffman stated that he would talk with the property owners to see what can be done. Ms. Magdich added that she would notify the Police Department.

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Slater, Cummins second, finds the project has satisfied the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15321, and adopt a resolution for approval of a Use Permit to allow self-storage facility expansion at 515 South Lower Sacramento Road subject to conditions of approval contained in the draft resolution along with the revisions per the Blue Sheets provided. The motion carried by the following vote:

Ayes: Commissioners – Cummins, Hennecke, Kirsten, Olson, Slater and Chair Kiser
 Noes: Commissioners – None
 Absent: Commissioners - Heinitz

- d) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Kiser called for the public hearing to consider the request of the Planning Commission for approval of a Use Permit Amendment to phase the establishment of a wine production facility at 27 East Vine Street. (Applicant: Jeff Hansen, on behalf of AH Wines, Inc, DBA Lodi City Wines; File Number: 2014-41 U; CEQA Determination: Exempt per Section 15301, 15183 and 15061)

Senior Planner Craig Hoffman gave a brief PowerPoint presentation based on the staff report. Staff is recommending approval of the project as conditioned.

Commissioner Hennecke asked if the phasing approval affects the permitting timeline. Mr. Hoffman stated that is why we are here now. The previous Use Permit expired because of some of the circumstances the applicant has run into that has delayed the permit process.

Commissioner Slater asked if this is going to be a tasting room also. Mr. Hoffman stated that the original approval was for a winery and tasting room.

Commissioner Cummins asked if the applicant's ABC licenses were all in order. Mr. Hoffman confirmed that the applicant has all of the appropriate licenses.

Hearing Opened to the Public

- Jeff Hansen, applicant, came forward to answer questions. Mr. Hansen stated that this project has taken many twists and turns since the original approvals. This facility is meant to be primarily a production facility. The phasing is going to give them the time to finish the renovations necessary.
- Commissioner Olson asked if the building has always been used for industrial purposes. Mr. Hanson stated that to his knowledge it has always been used as industrial.
- Chair Kiser wanted to make sure that Mr. Hansen was aware that the crush waste will need to be removed. Mr. Hansen confirmed that he is aware of that condition.
- Commissioner Slater asked if the roof is in need of repair. Mr. Hansen stated that the roof was replaced a few years ago and is in excellent condition. He added that there are three buildings and the business has three primary functions; 1 – production, 2 - bottling, 3 – stoage.

Public Portion of Hearing Closed

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Cummins, Hennecke second, finds the project has satisfied the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15321, and adopt a resolution approval of a Use Permit Amendment to phase the establishment of a wine production facility at 27 East Vine Street subject to conditions of approval contained in the draft resolution provided. The motion carried by the following vote:

Ayes: Commissioners – Cummins, Hennecke, Kirsten, Olson, Slater and Chair Kiser
 Noes: Commissioners – None
 Absent: Commissioners - Heinitz

4. PLANNING MATTERS/FOLLOW-UP ITEMS

Attorney Magdich clarified the table count changes for the cardroom. The State Legislatures last limited the table counts back in 2010. Then in 2014 they allowed for an increase of two tables,

increasing Lodi's count to 15. Jurisdictions will vary on the table counts allowed based on what they were allowing in 2010. Mr. Hennecke stated that the process seems a bit backwards.

Senior Planner Hoffman stated that the Tentative Looking Ahead Project List has been provided and staff is available to answer any questions.

5. ANNOUNCEMENTS AND CORRESPONDENCE

None

6. ACTIONS OF THE CITY COUNCIL

Senior Planner Hoffman stated that a memo has not been provided, but staff is available to answer any questions.

7. ACTIONS OF THE SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE

None

8. ART IN PUBLIC PLACES

Commissioner Kirsten gave a brief report of the items from the November meeting. Attorney Magdich stated that the contract for the Seward Johnson statues is sitting on her desk and can scan and email the reserved statues to the Commission.

9. COMMENTS BY THE PUBLIC (NON-AGENDA ITEMS)

None

10. COMMENTS BY STAFF AND COMMISSIONERS (NON-AGENDA ITEMS)

Commissioner Olson asked to see more detail on the vicinity maps.

Commissioner Hennecke asked how often the Commission needs to do the ethics training. Ms Magdich stated that it is required every two years. Mr. Hennecke asked for clarification on when the last time the training took place. Ms Magdich stated that the last training was two years ago.

11. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 8:27 p.m.

ATTEST:

Kari Chadwick
Planning Commission Secretary

Item 3a



**CITY OF LODI
PLANNING COMMISSION
Staff Report**

MEETING DATE: February 11, 2015

APPLICATION NO: Use Permit Amendment: 2015-01 U

REQUEST: Request for Planning Commission approval of a Use Permit to allow a Type-41 On-Sale Beer and Wine for Wingstop at 2640 Reynolds Ranch parkway #100. (Applicant: Mann and Company Inc - Wingstop Restaurant; File 2015-01 U; CEQA Determination: Exempt per Section 15321)

LOCATION: 2640 Reynolds Ranch Parkway #100
Lodi, CA 95240
APN: 058-650-08

APPLICANT: Mann and Company Inc.
Wingstop Restaurant
4150 West Ruby Hill Drive
Pleasanton, CA 94566

PROPERTY OWNER: LHRP Phase 2C
Mr. Dale Gillespie
1420 S. Mills Ave. Suite M.
Lodi, CA 95242

RECOMMENDATION

Staff recommends the Planning Commission approve the request of Mann and Company Inc - Wingstop Restaurant for a Use Permit to allow the sale of beer and wine Alcoholic Beverage Control (ABC) Type 41 license (eating place) at 2640 Reynolds Ranch parkway #100, subject to conditions in the attached resolution.

PROJECT/AREA DESCRIPTION

General Plan Designation: Commercial
Zoning Designation: PD (39) Commercial
Property Size: Restaurant measures 1,800 sq. ft.

The adjacent zoning and land use characteristics:

	ADJACENT ZONING DESIGNATIONS AND LAND USES		
	GENERAL PLAN	ZONING CLASSIFICATION	EXISTING LAND USE
North	Commercial	PD (39) Commercial	Retail/Services
South	Commercial	PD (39) Commercial	Retail/Services
East	Commercial	PD (39) Commercial	Retail/Services
West	Commercial	PD (39) Commercial	Retail/Services

BACKGROUND

The Reynolds Ranch Shopping Center is located south of Harney Lane and west of Highway 99. The proposed Wingstop Restaurant is looking to occupy a tenant space in an existing pad building containing Five Guys and Supercuts. (Attachment A and B)

The applicant is proposing a restaurant that will serve full meals and sides for lunch and dinner. Occupancy of the restaurant is 62 persons with 52 seated guests and a staff of 4 to 6 employees.

The applicant provided a floor plan and menu for the business. (Attachment C and D)

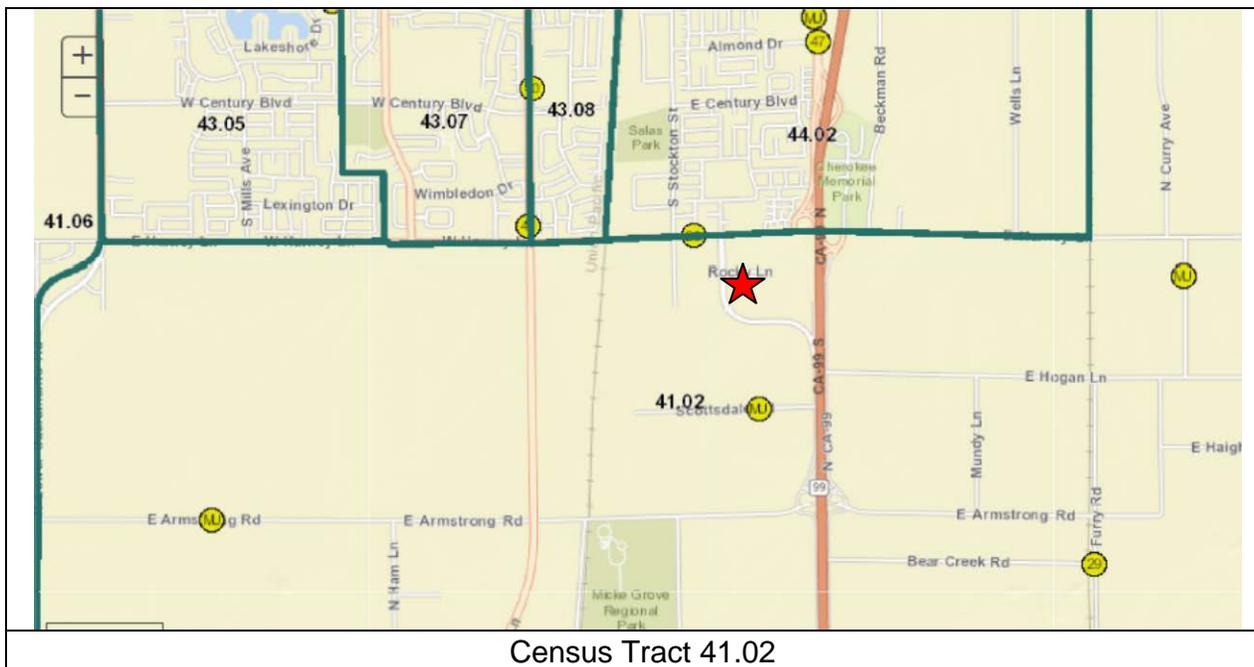
The applicant intends to operate the restaurant as follows: Monday – Sunday – 11:00 am to 12:00 pm.

The ABC Type 41 license allows for the sale of Beer and Wine in a Restaurant. The license requires food sales to be 50 percent of the business. The applicant has indicated that alcohol sales are typically 5 to 15 percent of sales.

The project is located in the PD (39) Commercial zoning district, which allows on site sale of alcohol. The request involves the approval of a public convenience and necessity (PCN) and Use Permit in an area that is over-concentrated with alcohol licenses. In order to allow an additional ABC license, the Planning Commission must make a finding of necessity; and if determined necessary, then consider the appropriateness of conditions of approval for the Use Permit for the new use. The majority of the ABC licenses in this census tract are in the City of Stockton

ANALYSIS

Per Land Use Code Section 17.22.030, onsite consumption of alcohol is permitted in the PD (39) Commercial zoning designation, subject to a use permit. The City established the Use Permit requirement to gain local control over whether or not a license is appropriate for a particular location and place conditions upon the use. The State Department of Alcoholic Beverage Control primarily controls license issuance, based on concentration of licenses within a particular Census Tract.



The project site is within Census Tract 41.02, which covers the area south of Harney Lane, east of Lower Sacramento Road, south of Eight Mile Road and west of Alpine Road.

The area is over-concentrated as defined by ABC for licenses. Planning staff is of the opinion that a public need and necessity is warranted in this case because the primary function of the establishment is a restaurant and does not involve off-site retail or wholesale distribution of alcohol. In the past, the Planning Commission and City staff has supported restaurants that wish to acquire ABC licenses because, typically, restaurants that serve alcohol in conjunction with food sales do not create alcohol related problems. The ABC Type 41 license requires the restaurant to operate as a bone fide eating establishment.

The discretionary Use Permit procedure enables the Planning Commission to impose conditions designed to avoid, minimize potentially adverse effects. Staff believes that the Planning Commission can make the required findings to approve the requested Use Permit. The required findings are as follows:

1. *The proposed use is allowed with a Use Permit within the applicable zoning district and complies with all applicable provisions of this Development Code.* **Comment:** The proposal involves a new restaurant in an existing building located within the PD (39) Commercial Zoning District, which allows sale of alcohol for on-site consumption in accordance with Development Code Section 17.22.030. The intent of the PD (39) Commercial zoning district is to provide for a range of uses, emphasizing high quality development, and to encourage a wide range of commercial uses that serve the public. The proposal is consistent with this intent.
2. *The proposed use is consistent with the General Plan and any applicable specific plan.* **Comment:** The General Plan land use designation for this area is PD (39) Commercial zoning district, which provides for sale of alcohol. The proposed sale of beer and wine in conjunction with a restaurant operation is the type of business allowed by the General Plan. The sale of alcoholic beverages as part of a restaurant is required by the State Department of Alcoholic Beverage Control to be secondary to food sales. Sale of alcohol in conjunction with a restaurant is a common way to increase sales and is therefore, consistent, with the General Plan.
3. *The location, size, design and operating characteristics of the use or development is compatible with and shall not adversely affect or be materially detrimental to the health, safety, or welfare of persons residing or working in the area, or be detrimental or injurious to public or private property or improvements.* **Comment:** The proposed sale of alcohol in conjunction with a restaurant operation is compatible with existing and future land uses in the immediate vicinity of the project area. The sale of alcohol in a restaurant is consistent with other commercial uses, such as the one proposed, in accordance with Land Use Policy subject to a discretionary review. The sale of alcoholic beverages for on-premise consumption is a normal part of business operations for a restaurant and provides a convenience for customers of the business. The proposed use is surrounded by other complementary uses that cater to the local and tourist trade.
4. *The location, size, design, and operating characteristics of the proposed use would be compatible with the existing and future land uses in the vicinity.* **Comment:** The proposed use complies with all requirements as set forth for the issuance of this Use Permit, in that the site is adequate in size, shape and topography for the proposed use, consisting of an existing building. Second, restaurants and other commercial uses

operate in this area. Third, the proposed use, as conditioned, will not have an adverse effect upon the use, enjoyment or valuation of property in the neighborhood because the proposed use will be located within an existing building with no additions to the footprint of the building. Fourth, the characteristics of the proposed sale of alcohol in a restaurant operation are customary for these types of businesses. In accordance with ABC requirements, receipts from alcohol sales shall not be in excess of food sales receipts. Lastly, it is found that the sale of alcoholic beverages as part of a restaurant is a convenience that does not typically create alcohol related problems.

5. *The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA) and the Lodi Environmental Review Guidelines.*

Comment: The project was found to be Categorical Exempt according to the California Environmental Quality Act, §15321, Class 21 (a) (2). The project is classified as an “Enforcement action by regulatory agencies” because it is the “adoption of an administrative decision for the use or enforcing the general rule, standard, or objective.” No significant environmental impacts are anticipated and no mitigation measures are required.

Staff sent a copy of the application to various City departments for comment and review. Their comments and requirements have been incorporated into the attached resolution. Conditions of approval are proposed to ensure the restaurant is not operated in a negative manner or without adequate oversight. If problems or concerns related to the sale of alcoholic beverages occur in the future, staff and/or the Planning Commission may initiate a public hearing where the Commission would have the ability to amend conditions or revoke the Use Permit.

ENVIRONMENTAL ASSESSMENT:

The project was found to be Categorical Exempt according to the California Environmental Quality Act, Article 19 §15321, Class 21 (a) (2). The project is classified as an “Enforcement action by regulatory agencies” because it is the “adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.” No significant environmental impacts are anticipated and no mitigation measures are required.

PUBLIC HEARING NOTICE:

Legal Notice for the Use Permit was published in the Lodi News Sentinel on Saturday, January 31 2015. Four (4) public hearing notices were sent to all property owners of record within a 300-foot radius of the project site as required by California State Law §65091 (a) 3. Public notice also was mailed to interested parties who expressed their interest of the project.

RECOMMENDED MOTIONS

Should the Planning Commission agree with staff’s recommendation, the following motion is suggested:

“I move that the Planning Commission adopt a Resolution finding that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15321, and adopt a Resolution approving the Use Permit Use Permit to allow the sale of beer and wine Alcoholic Beverage Control (ABC) Type 41 license at 2640 Reynolds Ranch Parkway #100 subject to the findings and conditions of approval contained in the draft Resolution.”

ALTERNATIVE PLANNING COMMISSION ACTIONS:

- Approve the request with attached or alternate conditions
- Deny the request
- Continue the request.

Respectfully Submitted,

Concur,

Craig Hoffman
Senior Planner

Stephen Schwabauer
Community Development Director

ATTACHMENTS:

- A. Vicinity / Aerial Map
- B. Site Plan
- C. Floor Plan
- D. Menu
- E. Draft Resolution

VICINITY MAP

North



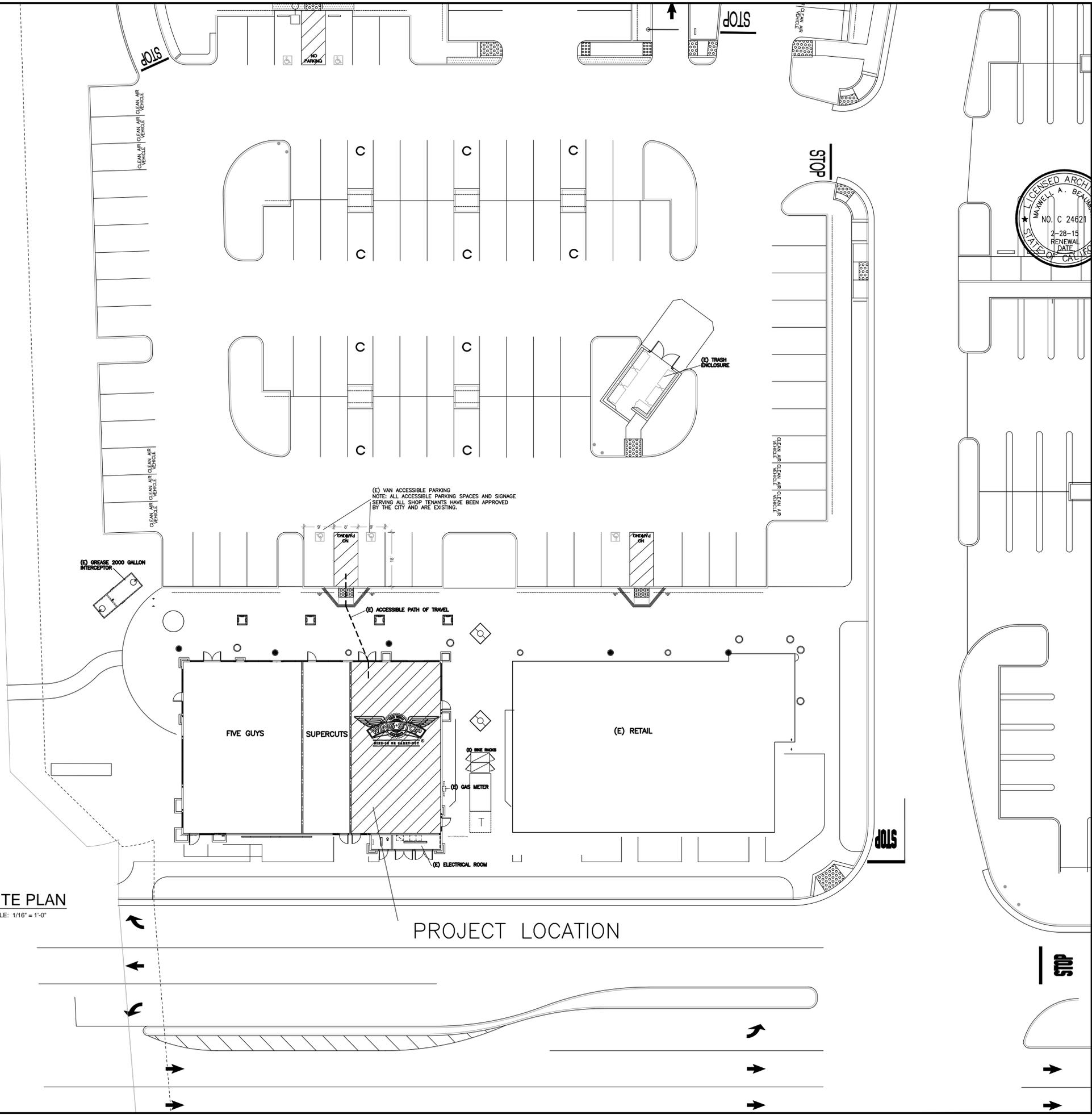
South

2640 Reynolds Ranch Parkway, Suite 100

REYNOLDS RANCH PARKWAY



SITE PLAN
SCALE: 1/16" = 1'-0"



PROJECT LOCATION

REV.	DATE	NO.
1/5/15		1

BEAUMONT ASSOCIATES
 MAXWELL A. BEAUMONT, ARCHITECT
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 DAVID M. /ACD / FSD

WING STOP RESTAURANT
 2640 REYNOLDS RANCH PARKWAY
 #100
 LODI, CA 95240

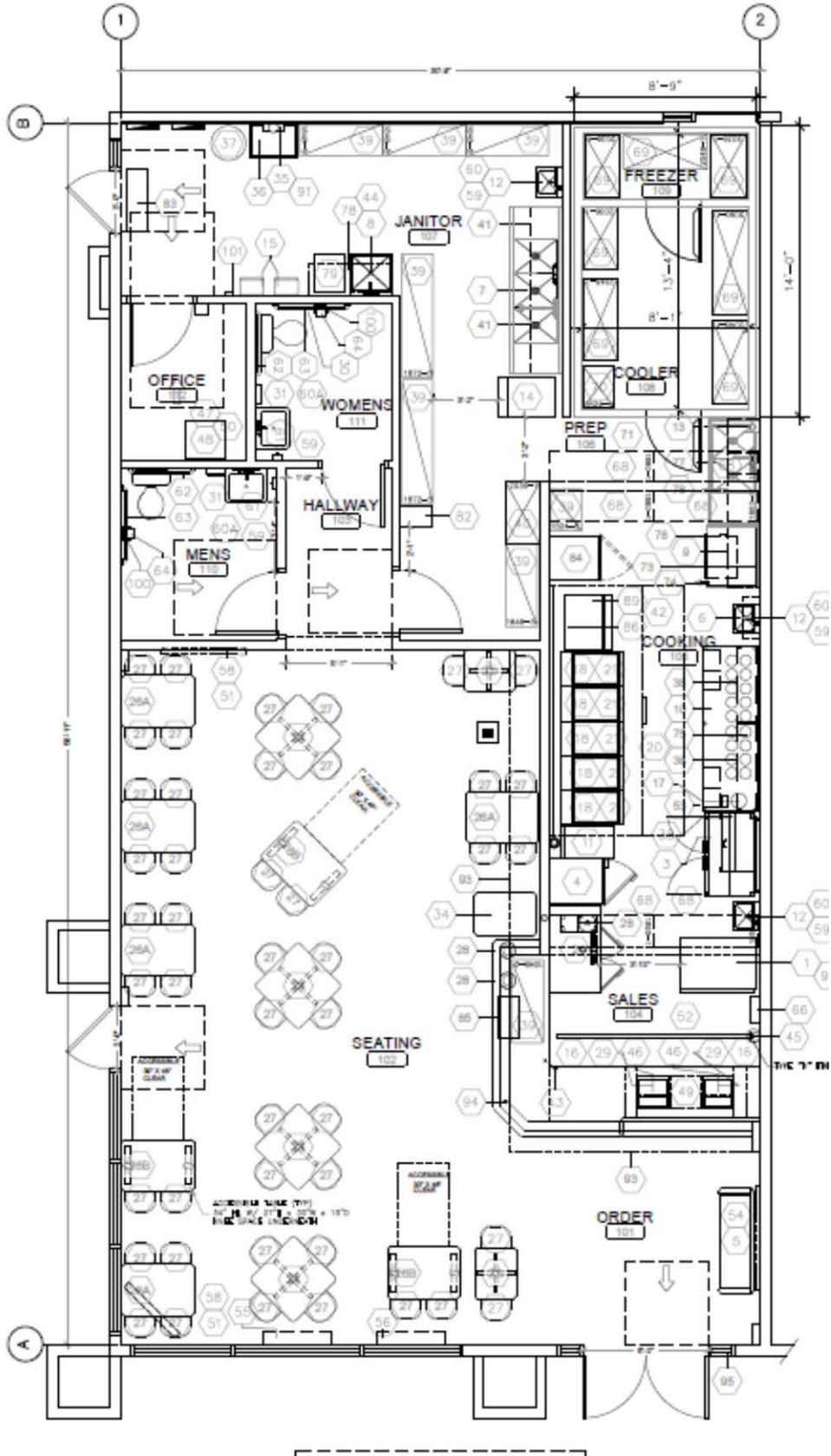
DWG DATE:
12/12/14

DRAWN BY:
MSD

A.0

WINGSTOP

Floor Plan



HOT WINGS.

(9 Kinds – Not Just Hot)

The Wing Experts™

COOL JOINT.

(Check It Out)



COLD DRINKS.

(Refreshing)

Open 7 Days a Week
11am to Midnight

WINGS ORDER SIZES

10 PIECE.....	4.99
<i>(1 or 2 flavors)</i>	
20 PIECE.....	9.89
<i>(1 or 2 flavors)</i>	
35 PIECE.....	16.99
<i>(Up to 3 flavors)</i>	
50 PIECE.....	23.99
<i>(Up to 4 flavors)</i>	
75 PIECE.....	34.99
<i>(Up to 4 flavors)</i>	
100 PIECE.....	45.99
<i>(Up to 4 flavors)</i>	

BONELESS WINGS

All White Meat, Marinated and breaded in our Secret Recipe

4 PIECE.....	4.29
<i>(1 Dip or Sauced 1 flavor)</i>	
7 PIECE.....	6.99
<i>(2 Dips or Sauced 1 or 2 flavors)</i>	
16 PIECE.....	15.59
<i>(3 Dips or Sauced 1 or 2 flavors)</i>	
24 PIECE.....	22.99
<i>(4 Dips or Sauced up to 3 flavors)</i>	
32 PIECE.....	29.99
<i>(5 Dips or Sauced up to 3 flavors)</i>	

Boneless Wings can be either SAUCED in any of our Nine Wing Flavors or DIPPED in one of special Dipping Sauces: Hickory Smoked BBQ, Honey Mustard or Ranch

WING FLAVORS

- ATOMIC** - *Some like it hot...Buckle up, fool!*
- CAJUN** - *Whooo-Wheee! These are spicy and delicious. Hot too!*
- ORIGINAL HOT** - *This is it! Our original recipe for hot wings. Enjoy!*
- MILD** - *For those who want the flavor; without all the excitement.*
- HICKORY SMOKED BBQ** - *Bold with a little kick!*
- LEMON PEPPER** - *A zesty combination sure to please. Lucky Lindy's favorite.*
- GARLIC PARMESAN** - *A smooth blend of flavors worth wrecking your breath for.*
- HAWAIIAN** - *Sweet and Tangy. Let's head for the Luau!*
- TERIYAKI** - *Oriental flavor with a hint of sweetness. Woody loves 'em*

SIDE ITEMS

FRESH CUT SEASONED FRIES	1.09
Large	1.99
HOT CHEDDAR CHEESE SAUCE.....	1.09
COLE SLAW or POTATO SALAD.....	1.09
1 Pound	2.69
BOURBON BAKED BEANS.....	1.09
1 Pound	2.69
CARROT/CELERY STIX.....	.59
BLEU CHEESE, HONEY MUSTARD or RANCH59
1 Pound	2.69
ROLLS.....	.29
Half Doz	1.59
Doz	2.99
SIDE SAUCE or SEASONING.....	.59
ICED TEA/SODA.....	1.09
2 Liter.....	1.99

ASK ABOUT OUR COMBO MEALS!

Made Fresh to Order, Never Pre-Cooked!

Party Trays Available

Store Address

City, ST Zip

Directionals-if needed, if not delete this text

Phone Ahead! (XXX) XXX-XXXX

RESOLUTION NO. P.C. 15-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI APPROVING THE REQUEST OF WINGSTOP FOR A USE PERMIT FOR A TYPE 41 ABC LICENSE TO ALLOW SALE OF BEER AND WINE AT 2640 REYNOLDS RANCH PARKWAY #100

- WHEREAS**, the Planning Commission of the City of Lodi has heretofore held a duly noticed public hearing, as required by law, on the requested Use Permit, in accordance with the Lodi Municipal Code, Section 17.74; and
- WHEREAS**, the project proponents are Mann and Company Inc., Wingstop Restaurant, 4150 West Ruby Hill Drive, Pleasanton, CA 94566; and
- WHEREAS**, the project parcel is owned by LHRP Phase 2C, Mr. Dale Gillespie, 1420 S. Mills Ave. Suite M.; and
- WHEREAS**, the project is located at 2640 Reynolds Ranch Parkway #100, Lodi, CA 95240 (APN: 058-650-08); and
- WHEREAS**, the property has a General Plan designation of Commercial and is zoned PD (39) Commercial; and
- WHEREAS**, Census Tract 41.02 in which the proposed restaurant is to be located is over concentrated of licenses allowing on premise consumption of alcoholic beverages; and
- WHEREAS**, because Census Tract 41.02 has an over-concentration of On-sale beer and wine alcohol licenses, the Planning Commission must make a finding of necessity and/or public convenience in order to permit the issuance of an additional Alcohol Beverage Control license in this tract; and
- WHEREAS**, based upon the facts and analysis presented in the staff report, and public testimony received and subject to the conditions of approval listed below, the Planning Commission finds that the establishment, maintenance or operation for the requested use or building applied for, will not, under the circumstances of this particular case, be detrimental to the health, safety, morals, comfort, convenience and general welfare of the persons residing or working in the neighborhood of such proposed use, or be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the City; and
- WHEREAS**, all legal prerequisites to the adoption of this Resolution have occurred; and

Based upon the evidence within the staff report and project file the Planning Commission finds:

1. The project was found to be Categorically Exempt according to the California Environmental Quality Act Section 15321, Class 21. The project is classified as an "Enforcement action by regulatory agencies" because it is the "adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective." No significant environmental impacts are anticipated and no mitigation measures are required.
2. The proposal involves a new restaurant in an existing building located within the PD (39) Commercial Zoning District, which allows sale of alcohol for on-site consumption in accordance with Development Code Section 17.22.030.
3. The intent of the PD (39) Commercial zoning district is to provide for a range of uses, emphasizing high quality development, and to encourage a wide range of commercial uses that serve the public. The proposal is consistent with this intent.

4. The General Plan land use designation for this area is PD (39) Commercial zoning district, which provides for sale of alcohol. The proposed sale of beer and wine in conjunction with a restaurant operation is the type of business allowed by the General Plan.
5. The sale of alcoholic beverages as part of a restaurant is required by the State Department of Alcoholic Beverage Control to be secondary to food sales. Sale of alcohol in conjunction with a restaurant is a common way to increase sales and is therefore, consistent, with the General Plan.
6. The proposed sale of alcohol in conjunction with a restaurant operation is compatible with existing and future land uses in the immediate vicinity of the project area. The sale of alcohol in a restaurant is consistent with other commercial uses, such as the one proposed, in accordance with Land Use Policy subject to a discretionary review.
7. The sale of alcoholic beverages for on-premise consumption is a normal part of business operations for a restaurant and provides a convenience for customers of the business. The proposed use is surrounded by other complementary uses that cater to the local and tourist trade.
8. The proposed use complies with all requirements as set forth for the issuance of this Use Permit, in that the site is adequate in size, shape and topography for the proposed use, consisting of an existing building and restaurants and other commercial uses operate in this area.
9. The proposed use, as conditioned, will not have an adverse effect upon the use, enjoyment or valuation of property in the neighborhood because the proposed use will be located within an existing building with no additions to the footprint of the building.
10. The characteristics of the proposed sale of alcohol in a restaurant operation are customary for these types of businesses. In accordance with ABC requirements, receipts from alcohol sales shall not be in excess of food sales receipts.
11. It is found that the sale of alcoholic beverages as part of a restaurant is a convenience that does not typically create alcohol related problems.
12. The proposed use would not have a substantial adverse economic effect on nearby uses because operation of a restaurant in accordance with applicable laws and under the conditions of this Use Permit is anticipated to be an economic benefit to the community.
13. Steps will be taken by the Applicant/Operator to reduce the number of incidents resulting from the over-consumption of alcohol including the proper training and monitoring of employees serving alcohol; the careful screening of IDs of customers to avoid sales to under-aged individuals; limiting the number of drinks sold to individual customers to avoid over-consumption; providing properly trained on-site security to monitor customer behavior both in and outside of the establishment; and working with the Lodi Police Dept. to resolve any problems that may arise.
14. The proposed use would not be detrimental to the general welfare of persons residing and working in the immediate vicinity, the neighborhood or the community at large because the sale of alcohol with a restaurant operation is not associated with detrimental impacts to the community.

NOW, THEREFORE, BE IT DETERMINED AND RESOLVED by the Planning Commission of the City of Lodi that Use Permit Application No. 2015-01 U is hereby approved, subject to the following conditions:

Community Development - Planning

1. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall, at their sole expense, defend, indemnify and hold harmless the City of Lodi, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys' fees and costs, by reason of, or arising out of, this Use Permit approval. The obligation to defend, indemnify and hold harmless shall include, but is not limited to, any action to arbitrate, attack, review, set aside, void or annul this Use Permit approval on any grounds whatsoever. The City of Lodi shall promptly notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense.
2. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
3. Starting from the effective date the business commences the sale of beer, wine and distilled spirits, this Use Permit shall be subject to a six-month and one-year review by Community Development Department and/or the Police Department. If the Community Development Department/Police Department determines it necessary, the Use Permit shall be subject to review by the Planning Commission to consider the business's operation for compliance with the conditions of the Use Permit, and in response to any legitimate complaints thereafter. Further, the City reserves the right to periodically review the area for potential problems. If problems (on-site or within the immediate area) including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, disturbing the peace and disorderly conduct result from the proposed land use, the Use Permit may be subject to review and revocation by the City of Lodi after a public hearing and following the procedures outlined in the City of Lodi Municipal Code. Additional reviews may be prescribed by the Community Development Department, the Police Department and/or Planning Commission as needed during and after the one year probationary period.
4. If operation of this use results in conflicts pertaining to parking, noise, traffic, loitering, public safety or other impacts, at the discretion of the Community Development Department, this conditional use permit may be referred to the Planning Commission for subsequent review at a public hearing. If necessary, the Commission may modify or add conditions of approval to mitigate such impacts, or may revoke said conditional use permit bound upon applicable findings.
5. The City Council, Lodi Police Department, the Planning Commission and City staff may, at any time, request that the Planning Commission conduct a hearing on this Use Permit for the purpose of amending or adding new conditions to the Use Permit or to consider revocation of the Use Permit if the Use Permit becomes a serious policing problem.
6. The Applicant/Operator and/or successors in interest and management shall insure that the sale of alcohol does not cause any condition that will cause or result in repeated activities that are harmful to the health, peace or safety of persons residing or working in the surrounding area. This includes, but is not limited to: disturbances of the peace, illegal drug activity, public intoxication, drinking in public, harassment of people passing by, assaults, batteries, acts of vandalism, loitering, excessive littering, illegal parking, excessive loud noises, traffic violations or traffic safety based upon last drink statistics, curfew violations, lewd conduct, or police detention and arrests.

7. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 30 calendar days of effective date of this Use Permit. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Lodi. The business owner shall be responsible for on-going training to accommodate changes in personnel.
8. No person who is in a state of intoxication shall be permitted within the business nor shall an intoxicated patron be sold additional alcoholic beverages. It is the responsibility of the business owner/operator to ensure no patron in state of intoxication is allowed into the premise.
9. Prior to commencement of the use, the applicant shall prepare and submit a practical program for controlling litter, spills, and stains resulting from the use on the site to the Community Development Department for review and approval. The program shall include a detailed time frame for the policing and cleanup of the area in front of the subject tenant space. Failure to comply with that program shall be considered a violation of the Use Permit and shall be subject to administrative remedy in accordance with Chapter 17.72 and Chapter 17.88 of the City of Lodi Municipal Code.
10. The subject property and its immediate surrounding shall be maintained neat and clean at all times. The subject property and its immediate surrounding shall be maintained free from debris and graffiti at all times. The property owner shall remove any debris or graffiti within 24-hours upon notification by the City. Litter on the site and any litter scattered on nearby property, streets, and sidewalks shall be removed daily. If necessary, the applicant shall steam clean the project site and its immediate surrounding premises as often as needed.
11. In the event of graffiti or other extraneous markings occurring, the applicant/operator and/or successors in interest and management shall remove or cover said markings, drawings, or signage within 24 hours of such occurrence, weather permitting. Paint utilized in covering such markings shall be of a color that matches, as closely as possible, the color of the adjacent surfaces.
12. Any change in operational characteristics, expansion in area or other modification to the approved plans shall require an amendment to this Use Permit or the processing of a new Use Permit.
13. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons and employees. All noise generated by the proposed use shall comply with the provisions of Chapter 9.24 and other applicable noise control requirements.
14. If alcohol is allowed outside the restaurant on a patio area, it must be within a fenced area per ABC requirements.
15. The applicant shall obtain Operational Permits from the Lodi Fire Department, Fire Prevention Bureau. The Operational Permits shall be obtained prior to commencement of sale of alcohol. The Fire Department may be contacted at 25 East Pine Street, Lodi, CA 95240-2127. Phone Number (209) 333-6739.

Community Development - Building - General Comments:

16. Any changes to the existing building, which are regulated by the current codes, shall require a building permit. All plan submittals shall be based on the City of Lodi Building Regulations and currently adopted 2013 California Building code. Please review our policy handouts for specific submittal procedures.
17. Plans shall provide occupant load calculations for the space, as per 2013 CBC, Section 1004.
- Occupant load for areas without fixed seats is based on square footage divided by the appropriate occupant load factor from 2013 CBC, Table 1004.1.2
- Office areas: 100 gross sq ft/person
 - Stock, Storage, Shipping: 300sqft/person
 - Dining and Lounge (Assembly) Area: Table & Chairs 15sqft/person, Chairs 7sqft/person
 - Kitchen/Staff/Serving areas 200sqft/person
18. If the calculated occupant load exceeds 49, the following requirements will need to be addressed:
- a. The occupancy classification for this space will change to an A-2. It shall be demonstrated that the A-2 occupancy is allowed in the building based on construction type, square footage and 2013 CBC, Table 503
 - b. Plans shall show that the building qualifies for non-separated occupancies under 2013 CBC, Section 508.3.3 or show fire rated occupancy separation walls as specified by 2013 CBC, Table 508.4.
 - c. Two exits shall be required. Exit doors shall be equipped with panic hardware and show swing in the direction of egress travel. 2013 CBC, Sections 1008.1.2, 1008.1.10
 - d. Exit doors shall be separated by minimum of 1/2 the diagonal distance of the area served in non-sprinklered buildings or minimum of 1/3 the diagonal distance of the area served in sprinklered buildings. 2013 CBC, Section 1015.2.1
 - e. Egress shall not pass through kitchens, storage rooms, closets or spaces used for similar purposes. 2013 CBC, Section 1014.2 (4)
 - f. Emergency egress illumination, with back-up power supply, shall be provided for all area discharge elements and the exterior landings. 2013 CBC, Section 1006
 - g. Illuminated exit signs shall be provided. 2013 CBC, Section 1011
 - h. Occupant load sign shall be provide at or near the main entrance. 2013 CBC, Section 1004.3
 - i. The rear door is now a required exit and is required to provide an accessible path of travel to the public way (alley, sidewalk or street). 2013 CBC, Sections 1027.5, 11B-206.4, 11B-206.4.1
19. The construction of walls and installation of equipment may require alterations to the existing fire sprinkler system. The Fire Sprinkler system alterations shall be submitted under a separate permit and cover to the Building Department by a C-16 licensed contractor.
20. Scullery/dishwashing sinks and/or dishwashing machines shall be connected **directly** to the drainage system and a floor drain shall be provided adjacent to such fixtures and the fixture shall be connected on the sewer side of the floor drain trap. 2013 CPC, Section 704.3
21. Unless the building meets one of the exceptions of 2013 CPC, Section 422.2 (allowing a unisex restroom), separate toilet facilities shall be provided for each sex. Plumbing occupant load shall be calculated using the plumbing occupant load factor specified by 2013 CPC Table A for each area use. The required number of plumbing fixtures (water closets, urinals, lavatories) shall be provided, as specified for A-2 occupancies by 2013 CPC, Table 422.1.

- 22. A Type I hood is required over cooking appliances that create grease laden vapors (fryers, griddles, ranges, broilers, etc.). Type I hoods are required to be equipped with a UL-300 compliant wet chemical hood and duct fire suppression system. Hood and duct fire suppression system shall be submitted to the Building Department by a C-16 licensed contractor. 2013 CMC, Sections 507, 508, 509, 510 & 513
- 23. The California Building Code (Title 24 Section 11B-202) requires that existing buildings, when alterations are made, shall be verified for compliance with disabled access requirements. These requirements shall apply only to the specific area of alteration and shall include an accessible entrance, an accessible route to the altered area, at least one accessible restroom for each sex, telephones and drinking fountains (if existing), and when possible additional items such as parking, storage and alarms.
- 24. If the construction costs of the alterations to the building are less than the current valuation threshold of \$139,934.00 and if the cost of the above listed accessibility upgrades are disproportionate (exceeds 20% of the project without the upgrades), then the required accessibility upgrades may be provided to the extent that is proportionate (20% of the valuation) as per 2013 CBC, Section 11B-202.4, Exception 8. In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access.
- 25. The applicant shall obtain all required permits and licenses from the California Department of Alcoholic Beverage Control and the San Joaquin County Health Department prior to commencement of the use and maintain said permits at all times while the use is operating. Copies of all permits and licenses shall be submitted to the Community Development Department prior to commencement of the use.
- 26. Any fees due the City of Lodi for processing this Project shall be paid to the City within thirty (30) calendar days of final action by the approval authority. Failure to pay such outstanding fees within the time specified shall invalidate any approval or conditional approval granted. No permits, site work, or other actions authorized by this action shall be processed by the City, nor permitted, authorized or commenced until all outstanding fees are paid to the City.
- 27. No variance from any City of Lodi adopted code, policy or specification is granted or implied by this approval.

I certify that Resolution No. 15-XX was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held on February 11, 2015 by the following vote:

AYES: Commissioners:

NOES: Commissioners:

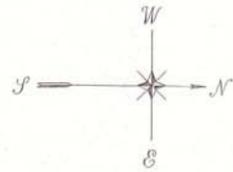
ABSENT: Commissioners:

ATTEST _____

Secretary, Planning Commission

Item 4a.

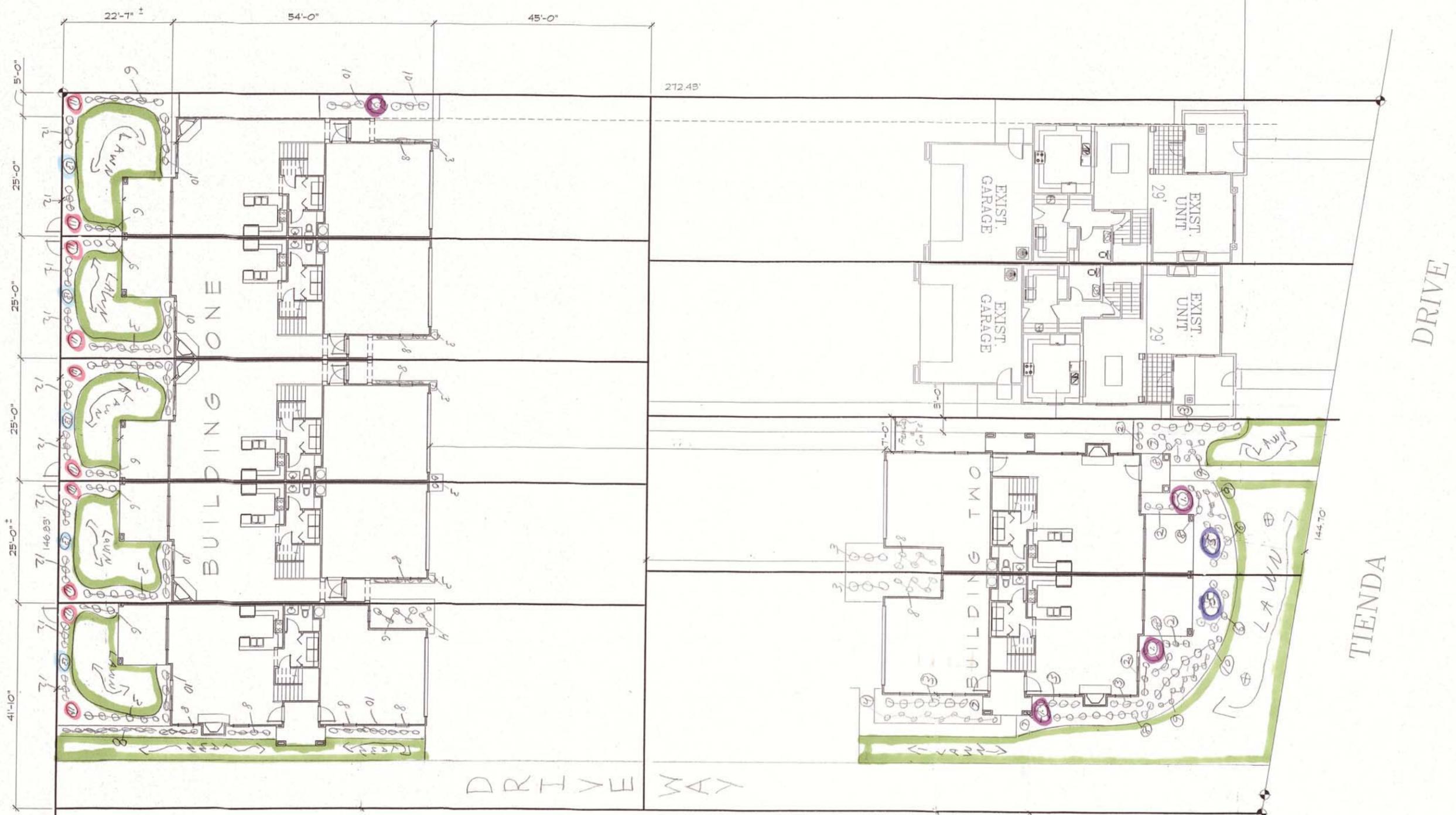
EXTERIOR DESIGN
 INC
 Lodi CA
 # 518809
 (209) 369-6622



LANDSCAPE PLAN
 SCALE: 1" = 10'-0"

PLANT AND TREE PLANS

SYM	COMMON	BOTANICAL	SIZE
1	Star Tree	Asac. Pulmonaria	15gal
2	Jacq. Maypole	Camelia Japonica	15gal
3	Camelia	Viburnum	5gal
4	"Spring Agave"	Viburnum	5gal
5	Festuca	Festuca Caesia	1gal
6	Weeping Cherry	Bunus Subhirtella "Pink"	15gal
7	Wineberry	Pittosporum Tobira	5gal
8	Pittosporum	Wineberry	5gal
9	Gaultheria	Gaultheria	5gal
10	"Patio Tree"	Sasiminoides	1gal
11	Nandina	Nandina Nana	1gal
12	Agapanthus	Agapanthus	1gal
13	Rhaphidopsis	Rhaphidopsis	5gal
14	Scarlet Oak	Quercus Umbellata	15gal
15	Fountain Lily	Coccinea	15gal
16	Mayten Tree	Ilis Morea	15gal
17		Maytenus boaria	15gal



REVISIONS	BY

H DESIGN
 RESIDENTIAL DESIGN
 (209) 470-4122
 JUAN F. HERRERA

SITE PLAN

FLETCHER DEVELOPMENT, INC.
 SUNSET COTTAGES
 CITY OF LODI, CALIFORNIA

Date:	11-4-2014
Scale:	AS NOTED
Drawn:	HERRERA
Job:	14-021
Sheet:	1
Of 10	Sheets

Recording Requested By:
WHEN RECORDED, MAIL TO:

DECLARATION
OF
COVENANTS, CONDITIONS AND CONDITIONS
OF
SUNWEST COTTAGES
BEING PARCELS

EXHIBIT 4

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

SUNWEST COTTAGES

This Declaration is made _____, 2015, by _____

_____, "Declarants".

Section 1. Recitals

Declarant is/are the owner(s) of the real property in the City of Lodi, San Joaquin County, California, which is more particularly described on Exhibit "A" attached hereto and incorporated herein.

These CC&Rs are intended to help maintain the long-term look and maintenance of the property, and in order to provide appropriate mechanisms for the permanent and ongoing maintenance of the property areas, including but not limited to landscaping, roofs, shared exterior walls and treatments (including color pallets), and shared drives. These CC&Rs are intended to include appropriate mechanisms to assess and collect assessments for said maintenance as needed and the ability to enforce the adherence to the CC&Rs. These CC&Rs are intended to provide that the homeowners and each of them is responsible for compliance of CC&Rs and also responsible and liable for any renter's violations of the CC&Rs.

Section 2. Declaration

Declarant(s) declare(s) that the Real Property is, and shall be held, conveyed hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, servitudes, liens, and charges, all of which are declared and agreed to be for the purpose of enhancing, maintaining, and protecting the value and attractiveness of the Real Property. All limitations, restrictions, easements, reservations, covenants, conditions, servitudes, liens, and charges shall run with the land and shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Real Property and shall be binding on and inure to the benefit of the successors in interest of such parties.

Section 3. Descriptions and Definitions

3.1 "Architectural Committee" means the committee of persons appointed and acting pursuant to subsection 7.2 of the Declaration entitled "Appointment and Elections of Committee".

3.2 "City of Lodi" means Lodi, California and its various departments, divisions, employees and representatives.

3.3 "County of San Joaquin" means San Joaquin County, California, the County in which the Development is located.

3.4 "Declarant" means _____, and its/their successors and assigns, if such successors and assigns are assigned to the rights of the Declarant pursuant to subsection 4.7 of the Declaration entitled "Assignment of Declarant's Rights and Obligations" or if such successor or assign is a mortgagee acquiring Declarant's interest in the Development by foreclosure or deed in lieu of foreclosure.

3.5 "Declaration" means the Declaration of Covenants, Conditions, and Restrictions and its amendments, modifications, or supplements.

3.6 "Governing Documents" is a collective term that mean and refers to this Declaration and the Subdivision Rules, if any.

3.7 Visitors and Invitees mean any persons within the Development at the express or implied invitation of an Owner for any purpose whether for business purposes, mutual advantage, for social purposes, or any other purpose.

3.8 "Lots" shall mean any plot of land, unimproved, vacant, or improved with a residence, numbered 1 through 9, inclusive, as shown on the Subdivision map as said Maps are defined in subsection 3.17, below.

3.9 "Mortgages" means a mortgage or deed of trust encumbering a lot or other portion of the Project or Development. A "mortgagee" shall include the beneficiary under a deed of trust and any guarantor or insurer of a Mortgage. "Institutional" Mortgagee is a Mortgagee that is a bank, savings and loan association, credit union, Mortgage company or other entity chartered or licensed under Federal or State laws whose principal business in lending money on the security of real property or investing in such loans, or any insurance company or any Federal or State agency or instrumentality, including, without limitations, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. A "first" Mortgage, or First "Mortgagee is one have priority as to all other Mortgages or holders of Mortgages encumbering the same Lot or other portions of the Project or Development.

3.10 "Owner" means the person or entity holding a record ownership interest in a Lot, including Declarant, and any contract seller under recorded contracts of sale. "Owner" shall not include persons or entities that hold an interest in a Lot merely as security for the performance of an obligation.

3.11. "Party line Fences" means any improvements that are constructed on the property line of a two (2) adjoining Lots.

3.12. "Development" and "Project" defined. "Project" or "Development" means the Property that is to be developed as well as improved and the improvements on the Property, as said Property is described in subsection 3.13, below.

3.13. "Property" means the Real Property described in the Recitals and such additional real property as may later be annexed to the Development and become subject to the provisions of the Declaration pursuant to subsection 8.4 of this Declaration, entitled "Annexation of Additional Property" and any Supplement to the Declaration recorded in accordance with the Declaration.

3.14. "Residence means a private family dwelling constructed or to be constructed on a Lot.

3.15. "Standard Subdivision" means a subdivision where there are no common or mutual rights of ownership or use among the Owners of the Lots.

3.16. "Final Subdivision Map" mean the filed, final Subdivision Maps for SUNWEST COTTAGES, TRACT NO. _____ described in Recitals.

Section 4. Parties, Rights, Easements

4.1 Persons Subject to Governing Documents. All present and future Owners, tenants, and occupants of Lots within the Development shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one (1) or more of such classes of persons, i.e., Owners, tenants, visitors, invitees, etc. The acceptance of a deed to any Lot, the entering into a lease, sublease or contract of sale with respect to any Lot, or the occupancy of any residence shall constitute the consent and agreement of such Owner, tenant or occupant that each an all of the provisions of the Declaration, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents.

4.2 General Easement for Utilities. There is hereby created a general blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacing, repairing and maintaining all sidewalks, driveways, and utilities, including but not limited to paving, water, sewers, gas, telephone, drainage, electricity, cable communications and television system. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Properties except as initially designed and approved by the Declarant or thereafter approve by the Architectural Committee. The easements provided for in the subsection 4.2 shall in no way effect any other recorded easement on the properties.

4.3 Rights of Entry or Use. Each lot shall be subject to the following right of entry and use:

1. The right of the Declarant or its designees to enter upon any portion of the Development to construct the improvements to the Property and to make repairs and remedy construction defects, provided that such entry shall not interfere with the use or occupancy of any occupied Lot unless authorized by its Owner, which authorization shall not be unreasonably withheld.
2. The right of any Owner or Owner's representatives, to enter the Lot of any other Owner, during the hours of 8 am to 6 pm, for purposes of performing installations, alterations, or repairs to mechanical or electrical services, including installation of television antenna and related cables, which are reasonably necessary to the use and enjoyment of his her Lot, provided request for entry is made in advance and that entry is at a time convenient to the Owner whose Lot is be entered upon. In case of emergency the right of entry shall be immediate.
3. The right, but not the obligation, of the Owners, or their representative, of adjoining Lots of entry upon and access to slopes and drainage ways located upon a Lot when such access is essential for the maintenance or stabilization of slopes or drainage, or both, on such adjoining Lots, provided request for entry is made in advance and that entry is at a time convenient to the Owner whose Lot is being entered upon. In case of emergency the right of entry shall be immediate.

4.4 Recorded Easements. There is in existence an Easement entitled "CROSSOVER EASEMENT AND MAINTENANCE AGREEMENT concerning and which pertains to the main driveway from the City Street known as Tienda Drive. In general terms, this driveway is owned $\frac{1}{2}$ by the Properties on the West side of the driveway to the center line of the driveway, and $\frac{1}{2}$ by the properties

on the East side of the driveway to the center line of the driveway. There is installed in said driveway paving and utilities which serve properties on both sides of the driveway. All the Lots subject to this Declaration shall proportionately share in the cost of maintaining that driveway and the utilities or improvements beneath said driveway. Said costs shall be shared, unless otherwise agreed among the Lot Owners, 1/9th each. All decisions regarding the necessity, the amount of the costs, the hiring of work to be done, or the negotiations with the property owners on the East side of the driveway shall be conducted by the members of the Architectural Committee. No Lot owner shall erect a structure, plant vegetation nor permit other material to remain on the Easement that will interfere with the use of the Easement for the purpose for which it is intended. Each Owner shall be mutually responsible for the maintenance and repair of the Easement unless the need for same is due to the use or willful misconduct of one of the Owners, his or her tenant, or agent, under which circumstance said maintenance and/or repair shall be the responsibility of said owner.

4.5 Crossover Easement and Other Easements regarding Driveway and Utilities Installed in Easements. Each lot and its Owner is declared to be subject to all easements, dedications, and right-of-ways granted or reserved in, on, over and under the Property and each Lot as shown on the Subdivision Maps, and shall share in the maintenance thereof as shall be proportionate and fair.

4.6 Assignment of Declarant's Rights and Obligations. Nothing in the Declaration shall limit the right of Declarant to complete construction of improvements to Lots owned by Declarant or to alter them or to construct additional improvements as Declarant deems advisable before completion and sale of the entire Development. The rights of Declarant in the Declaration may be assigned by Declarant to any successor to all or any part of any of Declarant's Interest in the Development, as developer, by an express assignment Incorporated in a recorded deed that transfers any such interest to a successor to a Mortgagee acquiring Declarant's Interest in the Development by foreclosure of by deed in lieu of foreclosure.

SECTION 5. COVENANTS AND USE RESTRICTIONS

5.1 Restriction of Use to Residential. Lots shall be used for residential purposes only, and no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for an business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purposes. However, for a period of five (5) years from the date of recordation of the Declaration, Lots owned by Declarant may be used by Declarant or its designees as models, sales office, and construction offices for the purposes of developing, improving, and selling Lots in the Development.

5.2 Leasing or renting the properties. An Owner is permitted to lease or rent Owner's Lot. However, any lease or rental agreement shall be in writing and any tenant shall abide by and be subject to all terms and provisions of the Declaration.

5.3 Maintenance – Owner Responsibilities

A. Each Owner of a Lot shall be responsible for maintaining the structures located upon his or her Lot, including the equipment and fixtures in the structure and its walls, roof, ceilings, windows and doors in a clean sanitary, workable and attractive condition. However, each Owner has complete discretion as to the choice of furniture, furnishings, and interior decorating, except that windows can be covered only by drapes, shutters, or shades and cannot be painted or cover by foil, cardboard, or other similar materials. If an Owner is required to make any repair or if the Owner desires to construct any improvement or install any fixture of

equipment that will affect the exterior appearance of the Lot and/or any structure on the Lot, the prior written approval of the Architectural Committee must first be obtained. However, such approval need not be obtained to make emergency repairs, provided that the structure so affected is restored to its original condition at the Owner's expense.

B. Furthermore, each Owner shall water, plant cut, remove and otherwise care for the landscaping located on his or her Lot. Nothing in the Declaration withstanding, the above referenced Owners shall maintain the landscaping on his or her Lot in a good, safe, neat, and orderly manner. All maintenance or landscaping issues shall be considered the province of the Architectural Committee, including the adjudication of complaints or concerns regarding the landscaping in the Development. The Architectural Committee shall adjudicate any/all complaints by giving a Lot Owner 7 day's written notice by personal delivery, mail or posting giving Owner the opportunity to be heard.

5.4 No offensive conduct or nuisance. No noxious or offensive activities including, but not limited to, repair of automobiles or other motorized vehicles, shall be conducted within the Development. Nothing shall be done on or within the Development that may be or may become an annoyance or nuisance to the residents of the Development, or that in any way interferes with the quiet enjoyment of occupants or Lots. No Owner shall serve food or beverages, cook, barbecue or engage in similar activities except with such Owner's Lot and at reasonable hours of the day. Reasonable hours shall generally be considered the hours between 8 am and 7 pm I the winder time and 8 am and 9 pm in the summer time.

5.5 Parking and Use of Garages

A. No vehicle shall be parked or left (including visitors of a Lot Owner) shall be parked or left in the Development other than within an enclosed garage or on the appurtenant drive or any designated gust parking area or space and at no time shall a motor vehicle of any kind be permitted on the front yard landscaping. The main driveway entrance to the project from Tienda Drive is a fire lane and so no vehicles shall be parked on that driveway at any time. No boat, trailer, recreation vehicle, manufactured building, camper inoperable vehicle, or commercial vehicle shall be temporarily placed or parked or left in the Development for a period longer than twenty-four (24) hours over any two hundred forty (240) – hour period and shall only be allowed for that time so long as adjacent to that Owner's residence and so long as it does not interfere with the parking, driving, or the walking ingress or egress of any other Owner.

B. All driveways and garages shall be maintained in a neat and order condition. Garages shall be maintained so that two (2) cars shall/can park in the garages at all times. Garages shall be used for the parking of vehicles only and shall not be converted for living, business, or recreational activities if doing so would preclude the Owners parking their vehicles in the garage(s). Storage of Owners personal items in garages is not prohibited but shall be incidental to the use of the garages for the parking of Owners vehicles. Owners should not consider street parking as additional parking opportunities but only temporary and short term day-time parking.

5.6 Signage. No sign of any kind shall be displayed to the public view on or from any Lot or any portion of the Project without the approval of the Architectural Committee, except as follows:

A. One sign of customary and reasonable (usual) dimensions advertising a Lot for sale, lease, for rent, or exchange displayed from a Lot;

- B. Such signs as may be used by Declarant or its assignees in connection with the development of the project and sale of Lots; or
- C. Such other signs or notices as are required by law or as are otherwise necessary to perfect a right provided for in law.
- D. This section shall not prohibit holiday decorations, one small political sign 20 days prior to a primary election, 20 days prior to a general election, and so long as such decorations are taken down within 10 days after that holiday season, or 5 days after the primary or general election.

5.7 Antennas and/or other external fixtures

A. No television or radio poles, antennas, satellite dishes, flagpoles, clotheslines, basketball standard or other external fixtures (temporary or permanent) other than those originally installed by the Declarant or approved by the Architectural Committee, and any replacements, shall be constructed, erected, or maintained on or within the Lot or any structures on it. Not wiring, insulation, air-conditioning, or other machinery or equipment other than that originally installed by Declarant or approved by the Architectural Committee and any replacements, shall be constructed erected, or maintained on or with the Lot, including any structures on it. Each Owner shall have the right to maintain a television or radio antenna with completely enclosed portions of his or her Residence. The location of common antenna or connection facilities for any cable television serving more than on Lot, if any, shall be as designated by the Architectural Committee, and each Lot and its Owner shall be subject to the right of other Owners to install, use, and maintain such common antenna or facilities.

B. Temporary basketball standards or other like recreational devices shall be allowed by the Architectural Committee upon such reasonable terms and conditions as that Committee shall determine and only so long as said devices are temporary, mobile, and portable so that each evening they can be relocated behind that Owner's fence or screened area and so long as it does not interfere with the parking of Owner's vehicle in Owner's garage, or obstruct in any way the ingress or egress of other Owners whether by vehicle or pedestrian.

5.8 Fencing. No fences, ornamental screens or walls of any nature shall be erected or maintained on or around any portion of any Lot except those that are installed in accordance with the original construction of the Development, their replacements, or those authorized and approved by the Architectural Committee. Adjacent Owners shall cooperate with one another and share in the reasonable costs necessary to properly maintain and repair Party-line fences.

5.9 Tanks or other forms of storage. No tank for the storage of gas or liquid shall be installed on the Development unless such installation is done by Declarant or has been approved by the Architectural Committee. Owner shall not, and shall ensure that guests and licensees of Owner shall not, disturb, annoy, endanger, or interfere with other Owners of the Project or neighbors, or use the Premises for any unlawful purposes, including, but not limited to, using, manufacturing, selling, storing, or transporting illicit drugs, explosive, flammables, or other contraband, or violate any law or ordinance, or commit a waste of nuisance on or about the Lot. Residents, their family, children and guests will respect the peace, comfort and quiet enjoyment of other residents. Musical instruments, radio, television set, stereos, etc., should be played only during reasonable hours, normally 10:00 AM to 10:00 PM and at reasonable volume.

5.10 Animals and pets. No animals, reptiles, rodents, birds, fish, livestock, or poultry shall be kept on any Lot or elsewhere within the Development except that domestic dogs, cats, fish and birds, inside bird cages, may be kept as household pets within any Lot, if they are not kept, bred or raised for commercial purposes or in unreasonable quantities. Each person bringing or keeping a pet upon the Development shall be liable to other Owners, their family member, guests, invitees, tenants, and contract purchasers, and their respective family member, guest, and invitees for any damage to person or property proximately caused by any pet brought upon or kept upon the Development by the person or by members of his or her family, guest, or invitees.

5.11 Restrictions of vehicles, tents, recreational vehicles, camper, etc. No boat, truck trailer, van, camper, recreational vehicle, manufactured building, or tent shall be used as a living area while located with the Development. However, trailers or temporary structures for use incidental to the initial construction of the Development or the initial sales of Lots may be maintained within the Development, provided that such use does not unreasonably interfere with any Owner's enjoyment of the area. Such trailers or structures will be promptly removed upon completion of all initial construction and all initial sales.

5.12 Disposal of trash and waste, etc. No trash, garbage, rubbish or other waste material shall be allowed to accumulate on any lot unless stored in appropriate sanitary, covered disposal containers located within the enclosed backyard area adjacent to the Owner's residence and screened from view from any roadway or Lot in the Development. Except on the scheduled day for trash pickup, these receptacles may be located in the places specifically designated for such purposes. Any extraordinary accumulation of rubbish, trash, garbage or debris, such as but not limited to debris generated upon vacating the premises or during the construction of modifications and improvement, shall be removed from the Lots to a public dump or trash collection area by the Owner or tenant at his or her expense.

5.13 Laundering or drying outside the properties. There shall be not exterior drying or laundering of clothes on balconies, patios, porches, windows, or other outside areas, unless previously agreed to in writing by the Architectural Committee.

5.14 Restrictions on Machinery or Equipment. No machinery or equipment of any kind shall be placed, operate or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private residence or appurtenant structures within the Development.

5.15 Restrictions on Ancillary structures. All structures which are detached from the residence must be approved by the Architectural Committee prior to their construction and if not of the same material and/or color as the exterior of the residence on the same Lot may not be more than six feet (6") in height and must be screened from view from any roadway or Lot in the Development. All other structures must be approved by the Architectural Committee.

5.16 Compliance with the law. Nothing shall be done or kept in or on any Lot that might increase the rate of, or cause the cancellation of, insurance for any portion of the Development, without the prior written consent of the Architectural Committee. No Owner shall permit anything to be done or kept in his or her Lot that violates any law, ordinance, state, rule, or regulation of any local, county, state or federal body.

5.17 Non-compliance; Legal Remedies

A. The failure of any Owner and/or the Declarant to comply with any provisions of the Declaration shall give rise to a cause of action in any aggrieved Owner

- (hereinafter, "Complaining Party") for the recovery of damages or for injunctive relief, or both.
- B. The Complaining Party shall deliver by personal delivery, or send by 1st class mail to the other party, hereinafter referred to as the "Responding Party" a thirty (30) days written notice of the nature of the dispute, the facts giving rise to its claim and its, his or her intent to initiate litigation, hereafter referred to as the "Litigation Notice". Should either party commence a judicial action, arbitration, or other proceeding without sending a Litigation Notice, the Responding Party shall be entitled to stay the action and request a Litigation Notice from the Complaining Party.
 - C. Before instituting any judicial action, arbitration, or other proceeding arising out of the Declarant's or any Owner's or resident's failure to allege failure to comply with any of the provisions of the Declaration, the Entity or Person who desire to initiate such action, hereinafter referred to as the Complaining Party" should make a good faith attempt to resolve the dispute first with the Responding Party and if that effort should fail, then to make a complaint to the Architectural Committee.
 - D. Within 15 days of receiving the complaint, the Architectural Committee shall investigate the complaint with the Responding Party, if that Responding Party cooperates, and issue its written decision and deliver said decision by personal delivery, posting, or by 1st class mail.
 - E. Within 14 days after posting, delivery, or mailing, Responding Party shall have the right to a hearing before the Architectural Committee. Two members of the Architectural Committee shall constitute a quorum for holding a hearing on the matter and making a final decision.
 - F. The Actions or inactions of the Committee or its agents, when said Committee is exercising its discretion in enforcing this Declaration in good faith, shall not be a basis for damages to any owner hereof any other person, not shall any such actions or inactions by the Declarant or the Committee or any member of the Committee or their officers or agents, individually or collectively constitute a cause of action for damages or equitable relief to any owner herein or any other person. Declarant, its successors, or assigns of the Committee or any member of the Committee, or their officer or agents, all acting singularly or together, shall not be responsible for any lots or damage, or be liable in any other way for any errors or defects, either latent or patent, in the plans and specifications submitted for approval, or any building or structure erected, in accordance with such plans and specifications.

SECTION 6. MORTGAGES AND MORTGAGEES

- 6.1 Mortgages. Any Owner may encumber his or her Lot with a Mortgage.
- 6.2 Approval of Amendment or Revocation by Mortgagees. In addition to the requirements of subsection 8.1 of the Declaration, entitled "AMENDMENT OF DECLARATION", and unless a greater percentage is expressly required by the Declaration or by law, the prior written consent, or deemed consent as provided below in this clause, of first Mortgagees of Lots that comprise at least fifty-one

percent (51%) of all Lots encumbered by first Mortgages shall be require to add or amend any material provisions of the Declaration or the Subdivision Maps, which establish, provide for, govern, or regulate any of the following:

1. Boundaries of any Lot;
2. Imposition of any right of first refusal or similar restriction on the right of the Owner to sell, transfer, or otherwise convey his or her Lot;
3. Any provisions that are for the express benefit of first Mortgagees or insurers or governmental guarantors of fist Mortgages.

For the purpose of this provision, an addition or amendment shall not be considered material if it is for the purpose of correction technical errors, or for clarification only. Any first Mortgagee, who receives a written request to consent to additions requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request.

6.3 Lien not invalidated by breach. No breach of any provision of the Declaration shall invalidate the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale, or otherwise.

6.4 Payment of Taxes or Premiums by Mortgagees. Any Mortgagee who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of the Declaration that is non-curable or the type that is not practical or feasible to cure.

6.5 Foreclosure Eliminates Unpaid Assessments. Any first Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or by deed in lieu of foreclosure or by any assignment in lieu of foreclosure shall be deemed to be loan made in good faith and for value and entitled to all of the rights and protection of the Mortgages under the Declaration.

6.6 Right to Appear at Meetings. Because of its financial interest in the Development, any Mortgagee may appear, but cannot vote, at meetings of Owners to draw attention to violations of the Declaration that have not been corrected or that have been made subject of remedial proceedings.

SECTION 7. ARCHITECTURAL CONTROL

7.1 Architectural Committee. Except as to construction of improvements by Declarant, no improvement of any kind shall be commenced, erected or maintained within the properties not shall any exterior addition or change or alteration be made in or to any Residence until the plans and specifications showing the nature, color, kid, shape height, including front, side and rear elevations, materials, and location of the same shall have been submitted to an approved in writing by the Architectural Committee as to quality of workmanship and material, harmony of external design and location in relation to surrounding structures, setback lines, topography and finish grade elevation.

7.2 Appointment and Election.

A. The Committee will consist of three (3) persons, which will constitute the number of authorized members of the Committee.

B. The Declarant shall appoint all of the original members of the Committee, and any replacements, none of whom need be Owners in the Development. Said original appointees, and any replacements, shall be subject to removal at any time by the Declarant. The initial appointees, and any replacements, shall hold office until the second anniversary of the recording of the Final Map.

Thereafter, Declarant may appoint a majority of the members of the Committee, and any replacements, until all of the lots of the Development have been sold and deeds to them recorded in favor of Owner, other than Declarant, or until the fifth (5th) anniversary of the recordation of the Final Map. Thereafter, the Owners shall have the power to elect all of the members of the Committee. A majority of the Committee may designate a representative to act on its behalf. Neither the members of the Committee nor its designate representative shall be entitled to any compensation for service performed pursuant hereto.

C. Declarant may, at any time, relieve itself of the obligation of appointing and maintaining member of the Committee by recording in the Records Office of the County notice stating that Declarant has surrendered the powers of appointment and maintenance. Upon the recording of such notice, event if not specified there, all such posers and obligations shall immediately vest in the majority of the Owners.

D. Except as otherwise provided for in the Declaration, the term of any Committee member(s) shall be terminated if and when any one (1) of the following events shall occur;

1. At the death or resignation of such member, or
2. By the removal of such member by the vote or request of at least fifty-five percent (55%) of the Owners.

E. Whenever a vacancy shall occur in the Committee, for whatever reasons, the successor or successors shall be appointed in the same manner as specified in subsection 7.2 above, to fill the vacancy or vacancies.

F. At any time after all of the Lots of the Development have been sold and deeds to them recorded in favor of Owner, other than Declarant, or until the fifth (5th) anniversary of the recordation of the Final Subdivision Map, whichever occurs first, but not frequently than one ever two (2) years, upon the written request of fifty-one percent (51%) of the Owners, an election shall be held to elect a member to each position on the Committee.

1. Nominations for election to the Committee shall be made by the Owners and all nominees must be Owners.
2. The Committee, or should there be in existence no members of the Committee, then the owners by majority vote, shall adopt procedures that provide for an equitable opportunity for nominees to communicate their qualifications and reasons for candidacy to the Owners to solicit votes, as well as a reasonable time for all Owners to choose among the nominees.
3. The election of members shall be by secret written ballot and the nominees receiving the highest number of votes up to the number of positions to be filled shall be elected.

7.3 Submission of Plans; Actions by Committee. Plans and specifications for the proposed Improvement shall be submitted to the Architectural Committee by personal delivery or certified mail to the chairman of the Architectural Committee. In the even the Committee fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, the request shall be deemed to have been approved. Approval of the Committee can contain conditions or requests for modification of particular aspects of the Owner's plan; and specifications.

7.4 Architectural Rules. The Architectural Committee may, subject to review by the Owners, from time to time adopt, amend and repeal rules and regulations to be known as

"Architectural Rules". Said Rules shall interpret and implement the provisions of the Declaration by setting forth the standards and procedures for the review and approval of proposed Improvements and guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended for use within the Properties, provided that said rules shall not be in derogation of the minimum standards required by the Declaration. In the event of any conflict between the Architectural Rules and the Declaration the Declaration shall prevail. These rules may provide for Architectural Application or Review fees. These rules may also provide for fees where it becomes necessary to adjudicate matters between owners including a reasonable application and/or response fee. The above fees may be paid in whole or part to the Committee members for their time with regard to dealing with Review, adjudication, and or variance matters.

7.5 Variances. The Architectural Committee shall be entitled to allow reasonable variances with respect to this subsection 7.5 of the Declaration or any restrictions specified in Section _____ of the Declaration, entitled "COVENANTS AND USE RESTRICTIONS". In order to overcome practical difficulties, avoid unnecessary expense and prevent unnecessary hardships, provided that the following conditions are met:

- A. If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under the Declaration, the Committee must conduct a hearing on the proposed variance after giving at least ten (1) days' prior written notice to all Owners of Residences. The Owners receiving the notice of the proposed variance shall have thirty (30) days in which to submit to the Committee written comments or objections with respect to the variance. No decisions shall be made with respect to the proposed variance until the thirty (30) days comment period has expire.
- B. The committee must make a good faith determination that:
 - 1. The requested variance does not constitute a material deviation from the overall plan and scheme of development with the Property or from any restriction contained herein or that the proposal allows the objective of the violated requirement(s) to be substantially achieved despite noncompliance; or
 - 2. The variance relates to a requirement hereunder that it is unnecessary or burdensome under the circumstance; or
 - 3. The variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Residence or Owner with the Property.

7.6 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Architectural Committee of a reasonable fee, as fixed from time to time by the Committee, the Committee shall execute an estoppel certificate, executed by any two (2) of its members, certifying, with respect to any Residence owned by the applicant Owner, that as of the date hereof, either:

- A. All Improvements made and other work completed by said Owner with respect to the Residence comply with the Declaration and Architectural Rules; or
- B. That such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying improvements or work and set forth with particularity the bases of such noncompliance. Any purchaser from

the Owner, or anyone deriving any interest in said Residence through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Committee, all Owners and any persons deriving any interest through them

SECTION 8. AMENDMENT OF DECLARATION

8.1 Amendment of Declaration

A. Before the close of the first transfer of a Lot in the Development to a purchaser or transferee, other than Declarant, the Declaration and any amendments to it may be amended or revoked in any respect, other than the cancellation or revocation in whole or part of any private easement recorded for the benefit of, the maintenance of, or the burdening of the property, by the execution by Declarant revoking this Declaration.

B. After the close of the first sale or transfer of a lot in the Development to a purchaser or transferee, other than Declarant, the Declaration may be amended or revoked in any respect, other than the cancellation or revocation in whole or part of any private easement recorded for the benefit of, the maintenance of, or burdening the property, by the vote or written consent of the holders of not less than fifty-one percent (51%) of the Owners excluding Declarant. However, if any provision of the Declaration requires a greater or lesser percentage of the voting rights of the Owner in order to take affirmative or negative action under such provision, the same percentage of Owners shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee or other person firm, agency, or entity is required under the Declaration with respect to any amendment or revocation of any provision of the Declaration no such amendment or revocation shall become effective unless such consent or approval is obtained. Any amendment or revocation subsequent to the close of such first sale shall be evidenced by an instrument certified by a duly authorized Owner and shall make appropriate reference to the Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder of the County.

8.2 Control of Amendment Provisions – Conflict with Mortgage Protection or other provisions. To the extent any provisions of subsections 8.1 through 8.5 of the Declaration conflict with the provisions of subsections 6.1 through 6.9 of the Declaration or any other provisions of the Declaration, the provisions of subsection 6.1 through 6.9 of the Declaration or the other provisions shall control.

8.3 Presumption of Validity. Any amendments made in accordance with the terms of the Declaration shall be presumed valid by anyone relying on them in good faith.

8.4 Conforming with Mortgage Requirements. It is the intent of the Declarant, that the Declaration and the Development in general, shall not and in the future meet all requirements necessary to purchase, guarantee, insure or subsidize any mortgage of a Lot in the Development by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, and the Veterans Administration. Each Owner shall take any action or shall adopt any amendment required by Declarant or any Mortgagee to conform the Declaration or the Development to the requirements of any of these entities or agencies.

8.5 Annexation of Additional Property. Any real property which is immediately adjacent and/or contiguous to the Development as presently configured may be annexed to the Development and made subject to the Declaration at the written election of the Declarant, or by the successor in title to such real property, made at any time and from time to time within five (5) years following the

recordation of the Final Map. Such election shall be made by the recording of a Supplement to the Declaration. Any Supplement recorded in accordance with the terms of this subsection 8.5 of the Declaration shall be conclusive in favor of all persons who relied on it in good faith. Upon recording the Supplement in accordance with the provisions of the Declaration, the real property described in the Supplement shall be a part of the development and subject to the provisions of the Declaration and to the rights and powers of the Owners pursuant to the terms of the Declaration. Declarant in such Supplement shall expressly reserve for the benefit of all property that may from time to time be covered by the Declaration reciprocal easement of use, enjoyment, access, ingress and egress. Such easements may be used by Declarant, its successors, purchasers, and all Owners of Lots, their guest, tenants and invitees, for sidewalks, walkways, vehicular access, and such other purposes reasonably necessary to the use and enjoyment of all Lots in the Development. The Supplement may contain complementary additions, amendments, and modifications to the Declaration necessary to reflect the different character, if any, of the real property being annexed, which are not inconsistent with the general scheme of the Declaration or which are required by an Institutional first Mortgagee to make Lots in the Development eligible for the Mortgage purchase, guaranty, or Insurance as described in subsection 8.4 of the Declaration.

SECTION 9. GENERAL PROVISIONS

9.1 Headings Used for Convenience. The headings used in the Declaration are for convenience only and are not to be used to interpret the meaning of the provisions of the Declaration.

9.2 Severability of clauses. The provisions of the Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions shall not invalidate any other provisions.

9.3 Remedies are cumulative. Each remedy provided for in the Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in the Declaration shall not, under any circumstance, be construed as a waiver of the remedy.

9.4 Violations as Nuisance. Each act or omission in violation of the provisions of the Declaration shall constitute a nuisance and, in addition to all other remedies set forth, may be abated or enjoined by an Owner.

9.5 Non-discrimination Clause. No Owner shall execute or cause to be recorded any instrument that imposes a restriction upon the sale, leasing or occupancy of his or her Lot on the basis of race, sex, marital status, national ancestry, color or religion.

9.6 Construction of provisions. The provisions of the Declaration should be liberally construed to effectuate its purpose. Failure to enforce any provision of the Declaration shall not constitute a waiver of the right to enforce the provision thereafter.

9.7 Number and gender. The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine and neuter shall each include the masculine, feminine, or neuter as the context requires.

9.8 Incorporation of Exhibits. All exhibits referred to ar attached to the Declaration and incorporated by reference.

9.9 Easement reserved and granted. Any easements referred to in the Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to the Declaration and the deed to any Lot.

9.10 Binding on Successors and assigns, etc. The Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representative, grantees, tenants, successors, and assigns or the Owners.

9.11 No Fixed Term. The Declaration shall continue in full force and effect until the Declaration is revoked pursuant to the terms of the Declaration.

9.12 No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by the Declarant, or its agents or employees, in connection with the properties, or any portion thereof, its physical conditions, zoning, compliance with applicable laws, fitness or intended use, or in connection with the subdivision, sale, operation, maintenance, cost or maintenance, taxes or regulation thereof as a standard subdivision, except as specifically and expressly set forth in the Declaration and except as may be filed by the Declarant from time to time with any governmental entity.

Declarant has executed this instrument as the _____ day of _____, 2015.

Declarant

Declarant
